IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4646 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MILES INDIA LTD - Petitioner(s)

Versus

COLLECTOR & 2 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and order passed by the Secretary, Revenue Department (Appeals), State of Gujarat passed in Revision Application No.SRD-587 of 1985 in remanding the matter to the Collector, Vadodara for considering the case afresh in light of the observations made in the said order. The petitioner has also challenged the order passed by the Collector, Vadodara in resuming and / or forfeiting the land in question to the State Government on the ground that there is breach of condition of grant and the purpose for which the land was granted is not fulfilled.

2. The petitioner company was granted land admeasuring 15 Acres situated at Sayajipura, Vadodara bearing Survey No.589 paiki by the State Government in the Revenue Department vide order dated 25.3.1975 and consequential order also came to be passed by the Collector, Vadodara vide order dated 9.4.1975 and the land in question came to be sold at the rate of Rs.25,000/- per hecter. It is required to be noted that the land in question was sold to the petitioner for industrial purpose and it was new tenure

impartible land. It is the case on behalf of the petitioner that thereafter the petitioner company applied for Non Agricultural Use Permission (hereinafter referred to as the “NA use permission” for short) with the District Panchayat, Vadodara and the District Development Officer, Vadodara vide order dated 10.12.1975 granted NA Use Permission. It is the case on behalf of the petitioner that thereafter the petitioners started using the lands in question by installing very expensive imported equipments for industrial purpose. It is also case on behalf of the petitioners that the industrial premises should have adequate quantity of vacant land for industrial growth, planning and expansion and has also shortage and other allied purpose and for providing recreational facilities to the staff and members of their families. It appears that thereafter the petitioner company made an application dated 1.8.1976 before the State Government for exemption under Section-20 of the ULC Act. That the entire land was not used and there was breach of condition of grant, the Collector, Vadodara issued show cause notice upon

the petitioner company dated 16.4.1984 and the petitioner company was required to show cause as to why the land in question should not be forfeited to the State Government as the petitioner company had committed breach of conditions Nos.2 & 5 of the order dated 9.4.1975. The petitioner replied to the same and denied the allegations leveled in the show cause notice vide reply dated 30.4.1984. It is required to be noted that according to the Collector, Vadodara, out of 15 acres of land, only 4 acres of land was used and balance 11 acres of land was not utilized. It is the contention of the petitioner that due to change in the industrial policy and due to certain other difficulties with regard to the other laws, the petitioner company could not utilize the entire land, the petitioner company approached the various companies in between. Thereafter, after considering he reply submitted by the petitioner company, Collector, Vadodara by its impugned order which according to the petitioner came to be served upon the petitioner company on 9.12.1985 and the Collector, Vadodara passed an order resuming 43,715

sq.mtrs of land – approximately 11 acres on the ground that the company has committed breach of conditions Nos.2 & 5 of the order. Being aggrieved and dissatisfied with the order passed by the Collector, Vadodara which came to be served upon the petitioner company on 9.12.1985, the petitioner company preferred appeal before the Secretary (Appeals), Revenue Department, State of Gujarat on 10.12.1985 and the petitioners pointed out the difficulties in not using the entire land in question and also submitted before the Secretary (Appeals) that there is no breach of condition Nos.2 and 5. After considering the submissions on behalf of the petitioner company and accepting the same, the Secretary (Appeals), Revenue Department by impugned judgment and order remanded the matter to the Collector, Vadodara directing the Collector, Vadodara to consider and hold an inquiry as to whether construction is according to the plans and to inquire as to whether the said land is really necessary for the petitioner company and how much land is required for further expansion and further to consider there

were genuine reasons by which the petitioner company could not utilise the entire land in question and while remanding the matter to the Collector, Vadodara, the Secretary (Appeals), Revenue Department quashed and set aside the order passed by the Collector, Vadodara resuming approximately 11 acres of land for not utilisation of the land in question. Being aggrieved and dissatisfied with the same, the petitioner company has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. It is required to be noted that this special civil application came to be disposed of by the learned Single Judge of this Court vide order dated 5.9.1986 and the following order came to passed.

> “The petitioners have challenge the order passed by the Special Secretary which is annexed at Annexure “D” to the petition. The Special Secretary has remanded the matter to the Collector for consideration of the

question afresh. He has made certain observations therein which might go to the indicate that he has asked the Collector, while remanding the matter, to proceed on the basis that there is some excess land with the matter, and hence, the petition challenging the said order would not be tenable.

The Collector is hereby directed that he might totally disassociate himself from the observations made in paragraph-6 of the order of the Special Secretary while considering the question and after giving a full hearing to the petitioner he shall decide as to whether the reasons for not constructing were genuine or not and if he comes to the conclusion that they were genuine, then there was no question of resuming the land as excess land. With this observations, and keeping all the contentions of the petitioner open, the

petition is dismissed at the admission stage. Liberty to revive in case of difficulty by a mere note." Sd/- D.C.Gheewala, J. Date-5.9.1986"

4. It appears that thereafter the present special civil application came to be revived. Shri A.J.Patel, learned advocate appearing on behalf of the petitioner has submitted that the petitioner company is manufacturing life saving drugs and is carrying on its manufacturing activities in its factory and it is a profit making company. It is also further submitted that after the impugned order and during pendency of the present special civil application, the company has been in the business of In-Vitro Diagnostic products which are very critical in health care management and welfare of human beings and they are providing jobs to 110 persons. It is also further submitted that initially the petitioner company obtained permission from the competent authority under the ULC Act and thereafter got necessary

permission from the Nagarpalika and sanctioned the plan but due to the change in the industrial policy, the petitioner company could not utilise the entire land in question and the same has not been properly considered by the Collector, Vadodara as well as Secretary (Appeals). It is also further submitted that the Secretary (Appeals) has materially erred in holding that there is breach of conditions, i.e., the company has used the land for the other purpose, such as, for selling grass. It is submitted that the grass had grown up in its natural way in open piece of land and to remove the same, even the contract was given and therefore, it cannot be said that the land is used for the purpose of other than the purpose for which the land is granted. It is submitted that while coming to the aforesaid conclusion, the Collector has relied upon the report of the Talati-cum-Mantri which has not been given to the petitioner company. It is also submitted that considering the reasons given by the petitioner company for not utilising the entire land in question, the Secretary (Appeals), as such, ought not to have remanded the matter to the

Collector and ought to have decided the same and therefore, it is requested to allow the present special civil application.

5. Shri M.R.Mengade, learned AGP appearing on behalf of the respondents while opposing the present special civil application has submitted that as such the impugned order which is challenged by the petitioner company of Secretary (Appeals) is the order of remand and as such, the Secretary (Appeals) has set aside the order passed by the Collector, Vadodara and has directed the Collector, Vadodara to hold necessary inquiry as to whether the construction is according to the plans, and that as to whether the said land is really needed by the petitioner company and further as to whether how much area of the land is required for the petitioner company for its expansion and that the reasons which are given by the petitioner company for not utilising the entire land are genuine or not, and the petitioner can put up his case before the Collector, Vadodara at the time of holding necessary inquiry as per the order passed by

the Secretary (Appeals) on remand and therefore, it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is required to be noted that in the present special civil application, the petitioner has challenged the order passed by the Collector, Vadodara as well as the Secretary (Appeals), Revenue Department, State of Gujarat. So far as the order passed by the Collector, Vadodara resuming the land in question is concerned, the same is already quashed and set aside by the Secretary (Appeals), Revenue Department, State of Gujarat while passing the order in the revision application No.587 of 1985 while remanding the matter to the Collector, Vadodara and therefore, the said relief cannot be granted. So far as the challenge to the judgment and order passed by the Secretary (Appeals) passed in Revision Application No.SRD-587 of 1985 is concerned, it is

required to be noted that by the said judgment and order the Secretary (Appeals) has as such remanded the matter to the Collector, Vadodara for deciding the matter afresh and to hold necessary inquiry as to whether there were genuine reasons for not utilising the entire land in question by the petitioner and as to whether the construction is according to the plans, as to whether the said land is really necessary for the petitioner company and how much land is required for the petitioner company for its expansion and submissions which have been made by the petitioner in the present special civil application and also at the time of hearing of present special civil application can be made by the petitioner company before the Collector, Vadodara while taking any appropriate decision by the Collector, Vadodara on remand. In my opinion, no prejudice is caused to the petitioner company while remanding the matter. On the contrary, the Secretary (Appeals) is justified in remanding the matter and the entire question will be at large open before the Collector, Vadodara. Under the circumstances, there

is no substance in the present special civil application. However, it is made clear that on remand the Collector, Vadodara to consider the observations made by the Secretary (Appeals), Revenue Department, State of Gujarat made in Revision Application No.587 of 1985 it its true later and spirit and shall take a decision after giving full hearing to the petitioner and shall decide as to whether the reasons for not putting up construction in the entire land in question were genuine or not and shall also consider the requirements of the petitioner company and as to how much land is required for the purpose of expansion by the petitioner company while considering the question with regard to resuming the land and as such, all the contentions are kept open.

8. With aforesaid observations and directions, the present special civil application is disposed of.

Rule is discharged with no order as to costs.

[M.R.Shah, J.]

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